

EXHIBIT 21

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Atlanta, GA

April 23, 2009

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL NO. 1456
PRICE LITIGATION) CIVIL ACTION:
THIS DOCUMENT RELATES TO) 01-CV-12257-PBS
U.S. ex rel. Ven-A-Care of) Judge Patti B. Saris
the Florida Keys, Inc. v.)
Abbott Laboratories Inc.,) Chief Magistrate Judge
No. 07-CV-11618-PBS) Marianne B. Bowler

VIDEOTAPED 30(b)(6) DEPOSITION OF

JOHN M. LOCKWOOD, M.D.

Volume I

(Taken by Defendant Abbott Laboratories Inc.)

April 23, 2009

9:27 a.m.

Suite 800

1420 Peachtree Street, N.E.

Atlanta, Georgia

Reported by: F. Renee Finkley, RPR, CRR, CLR,
CCR-B-2289

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Atlanta, GA

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<p style="text-align: right;">Page 10</p> <p>1 MR. BREEN: I'm going to just deposit a 2 technical objection. To the extent that this 3 requires that the witness reveal communications 4 with counsel that are subject to the 5 attorney/client privilege, I would instruct him 6 not to answer, but to let us know if he feels 7 there's an area he cannot respond completely on 8 because of that.</p> <p>9 Aside from that, I think he can give you 10 an answer to the question, cause it's a 11 practical answer as opposed to a lot of 12 legalisms that went into it.</p> <p>13 THE WITNESS: I think we decided that I 14 might be most knowledgeable on the Ery topic.</p> <p>15 Q. (By Mr. Berlin) And why is that? Why 16 would you be more knowledgeable than Mr. Jones or 17 Mr. Cobo or Mr. Bentley about these issues?</p> <p>18 A. Because I spent a lot of time working and 19 developing the concepts and ideas that went into the 20 Ery case.</p> <p>21 Q. How did it come to be that you were the 22 one who spent the time working and developing on the</p>	<p style="text-align: right;">Page 12</p> <p>1 the -- and I'm going to get to the complaint in more 2 detail later, but just as a preliminary issue, when 3 we refer to Ery or the Erythromycins at issue in the 4 case, those are the NDCs that are listed in paragraph 5 33; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And going back to your previous answer 8 about why you're testifying here today, you said that 9 you took on the job of spending time to work and 10 develop the concepts for this case. When did you 11 first embark upon that task?</p> <p>12 A. I would say in particular, just to these 13 drugs and this complaint, sometime in 2000.</p> <p>14 Q. And we'll get to this in much greater 15 detail later, but what led you to look at these 16 particular drugs, the drugs listed in -- at least 17 some of the drugs listed in paragraph 33 in 2000?</p> <p>18 A. I was looking at some of our pricing data 19 and I noticed a couple of things about these drugs. 20 These were Abbot Pharmaceutical Products Division 21 drugs, PPD drugs. It was known to me that Abbott PPD 22 was primarily a brand company. I knew some of these</p>
<p style="text-align: right;">Page 11</p> <p>1 concepts for the Ery case?</p> <p>2 A. I think I just took it on as a project for 3 myself.</p> <p>4 Q. And let's just be clear about one thing. 5 You and I during the course of this deposition will 6 sometimes refer to the Erythromycin drugs as Ery, and 7 that's clear, right?</p> <p>8 A. That would be fine, yes.</p> <p>9 Q. When did you --</p> <p>10 A. Well, to the extent we're talking about 11 the oral Erythromycins for this case.</p> <p>12 Q. Yes. Yes. That's correct. And again, 13 that -- this case -- might as well, while we're on 14 the subject, mark the -- I'm going to mark a copy of 15 the complaint and its exhibits as Exhibit 2 for this 16 deposition.</p> <p>17 (Exhibit Lockwood Ery 002 was 18 marked for identification.)</p> <p>19 Q. (By Mr. Berlin) Here you go, 20 Dr. Lockwood. What I've handed you is Exhibit 2, 21 which is a copy of the complaint in this case and the 22 exhibits to the complaint. Just so we're clear about</p>	<p style="text-align: right;">Page 13</p> <p>1 drugs are brands and I noticed discrepancies between 2 the prices that we could buy these drugs from the 3 wholesalers and the reported WAC prices; and I 4 noticed that there was generally a relationship, a 5 very consistent relationship between the normal 6 Abbott brand drugs at Pharmaceutical Products 7 Division, they're more typical brands, I guess.</p> <p>8 There was a very solid repeatable 9 relationship between the wholesale -- the -- I guess 10 I need to say this properly, the wholesale catalog or 11 list price, whatever, the wholesaler's catalog price 12 and the average wholesale price and the catalog 13 wholesaler's price and the reported WAC.</p> <p>14 And for these particular drugs I found 15 those relationships were not the same as the other 16 brand drugs at PPD. And it stuck out -- it stuck out 17 to me when looking at that. And I spent more time 18 looking and understanding why that was the case and 19 what was causing it and understanding that because I 20 quite simply thought that there was perhaps a 21 fraudulent misrepresentations in prices for these 22 drugs.</p>

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<p style="text-align: right;">Page 18</p> <p>1 different way. Are there drugs listed, NDCs listed 2 in paragraph 33 that did not have generic competition 3 at some point during the complaint period? 4 A. Let me look at the complaint period, but 5 I -- I believe the answer to that is yes, that there 6 are some without generic competition during the 7 complaint period. This is such a hyper-technical 8 thing. It would take me some time to look at that 9 for each NDC number. I'd probably have to go through 10 a Redbook and a few other things to really be a 11 hundred percent sure. 12 But there are a number of these that at 13 least at -- and I believe through the entire 14 complaint period, but certainly during the complaint 15 period had no competition for that particular drug 16 form. Yeah, for that drug form. Yeah. 17 MR. BREEN: Eric, this is a good example 18 of what I was saying earlier. If this is a 19 topic -- there's a general question about if 20 there were any -- if there were any that didn't 21 have generic competition of the Erys during the 22 complaint period that you feel is in one of your</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. BREEN: Got you. Okay. I just want 2 to let you know if -- you know, zig or zag on 3 those, however you think is appropriate, but 4 when you get to one of them and he doesn't have 5 a present recollection that's sufficient to 6 respond, let me know and I will -- we will 7 endeavor to try to remedy that is all I'm 8 saying. 9 MR. BERLIN: I appreciate that. Thank 10 you. 11 Q. (By Mr. Berlin) Why were you looking at 12 this issue in 2000? 13 A. Well, we were looking -- and we started 14 looking at this earlier than 2000 -- at oral drugs 15 where we felt that there were issues with the 16 reported WACs and in particular where, had the WAC 17 prices been reported what we felt would be 18 accurately, that there in fact would have been a 19 change in the federal upper limit for those drugs, if 20 they were on a federal upper limit, and -- and also 21 looking at what effect that may or may not have had 22 on the reported AWP for those drugs. And we had</p>
<p style="text-align: right;">Page 19</p> <p>1 designated areas for Dr. Lockwood as a 2 Ven-A-Care 30(b)(6) to take a position on as 3 opposed to find out factually, let me know. 4 We'll take some time during the break or 5 tonight, go through the complaint and try to 6 figure it out, or it may be an area that really 7 isn't appropriate to try to get a position out 8 of Ven-A-Care on if it's just a factual issue. 9 So let me know if it's one of those, one of 10 those areas. 11 MR. BERLIN: I think the answer to your 12 question, Jim, is that I'm not asking 13 Dr. Lockwood to solve that. What I'm asking is 14 what is Ven-A-Care's knowledge of that. 15 MR. BREEN: Okay. So -- 16 MR. BERLIN: I'm not asking him -- it may 17 be that his answer is we don't have knowledge 18 as -- you know, NDC by NDC, and what you'd have 19 to do is go and solve it in the way that he 20 described. And I'm not asking him to solve it. 21 I'm asking what is Ven-A-Care's knowledge of 22 that.</p>	<p style="text-align: right;">Page 21</p> <p>1 looked in detail at that FUL issue or started to look 2 in detail at that FUL issue and I happened to look at 3 the Abbott drugs just as part of the process. 4 Q. What led you to look at the Abbott drugs 5 at that point in 2000 as opposed to sometime in 1999 6 or 1998? 7 A. Well, this isn't the only thing I was 8 doing at Ven-A-Care. We had a wide variety of 9 projects going on. I certainly had a wide variety of 10 projects going on at any one time and it was just a 11 matter of, I guess, what we had time to look at in 12 terms of investigating and looking at these issues. 13 And I looked at -- happen to look at Abbott in more 14 detail in 2000, and in many ways, this complaint 15 describes what I found. 16 Q. Was that something that was on -- really 17 what I'm trying to determine, is it something that 18 was on sort of an agenda or task list that you had 19 saying I want to look at the Abbott drugs and you 20 were just busy or was it just that day you thought I 21 ought to look at the Abbott drugs on this? 22 A. I don't think that we were ever that</p>

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<p style="text-align: right;">Page 22</p> <p>1 organized that we had a specific task list about what 2 to do, but we started looking at some oral drugs 3 and -- and in particular looking at the FUL issue. 4 And that ultimately led to me looking at -- so, I 5 mean, I looked at lots of other manufacturers too. 6 It's not like I only looked at Abbott. But I looked 7 at these drugs and looked at PPD and found what I 8 thought were discrepancies and problems with these 9 drugs in terms of their price reporting. 10 Q. When you sat down to look at this issue, 11 describe how you went about doing that, I mean sort 12 of the mechanics of and the documents that you used 13 to try to evaluate the issue. 14 A. Well, we had a number of things available, 15 meaning we had a number of different price lists 16 available, and we had McKesson catalogs that went 17 back I think to 1992, which contained prices on these 18 drugs or many of these drugs. We had some Bergen 19 Brunswig printouts that contained prices on these 20 drugs. 21 And during 2000 we had been essentially 22 shifted by McKesson from the catalogs into an</p>	<p style="text-align: right;">Page 24</p> <p>1 more by creating new columns where I would, for 2 instance on an investigative level, divide the 3 average wholesale price by the regular cost, the 4 catalog price. That would give me a ratio. And then 5 I could -- 6 Q. I'm sorry. Which number was the numerator 7 and denominator? 8 A. The AWP that was in that program divided 9 by the noncontract catalog price, regular cost 10 column, what -- there were a number of different 11 names for this column, and that gave me a ratio; 12 essentially divide the AWP by the regular cost 13 column. 14 That showed me that for the bulk of the 15 Abbott PPD drugs, that that ratio was 1.25, as I 16 recall. Now, this is a -- kind of an interesting 17 math issue, but in -- as I recall -- and I'd probably 18 have to sit down, do the math again. But I think if 19 you add 20 percent to the WAC price -- First Data 20 Bank was doing that to arrive at an AWP, but the 21 reverse of that gives you a 1.25 ratio. It's a 22 little bit -- it's a math glitch.</p>
<p style="text-align: right;">Page 23</p> <p>1 electronic version of their catalog called Econolink 2 that was on a computer, so that I basically did a 3 printout or looked at the Abbott drugs listed in 4 Econolink, because I guess it was user-friendly or it 5 was computerized, whatever, and really looked at and 6 saw and noticed the discrepancies between the 7 so-called regular costs at McKesson, which is their 8 catalog price, list price, noncontract price, variety 9 of different names for it, and the AWPs. 10 And during 2000 I was able to -- I did a 11 number of things. I was able to print that Econolink 12 database to a file, a text file. And during 2000 and 13 perhaps a little bit earlier, but mainly during 2000, 14 one of my other projects was to learn and teach 15 myself how to use Microsoft Access, which is a 16 software program that allows you to manipulate 17 databases. 18 So one of the things I was able to do was 19 to import the text file from this electronic catalog 20 into Microsoft Access, including all the pricing 21 data, times, dates, the whole thing as a text file. 22 And then I was able to essentially investigate this</p>	<p style="text-align: right;">Page 25</p> <p>1 But suffice it to say that for all the PPD 2 drugs, that ratio was about 1.25. For the -- mainly 3 the drugs in this complaint, that ratio was 4 significantly higher, and it varied from drug to 5 drug, but significantly higher, so that it allowed me 6 to also look at -- I ultimately looked at the 7 reported WACs on those and found, I felt, consistency 8 in the other PPD drugs that -- they're typical brand 9 drugs. The regular cost column was very consistent 10 with the reported wholesale acquisition cost, and for 11 these Ery drugs, it was inconsistent. 12 I then also looked at these drugs in 13 regards to the FUL. And for many of the drugs that 14 were initially filed -- and I think with our initial 15 notice and whatever, disclosures, whatever those 16 legal terms are, but one of our initial letters to 17 the government on this, we pointed out that -- at 18 least in our opinion, that had Abbott reported what 19 we assume were the real wholesale prices, which were 20 actually below the price we were getting it -- and 21 we're assuming 2 to 5 percent below -- that in many 22 of those cases, had Abbott, in our opinion, reported</p>

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<p style="text-align: right;">Page 34</p> <p>1 would be much more time and labor-intensive 2 to -- to do it. 3 Ultimately we did look at some of those 4 prices going further back based on the prices 5 that we saw in the McKesson catalogs and in 6 Bergen. The thing that really drew it to my 7 attention was that the Econolink software had 8 the Economost number and it had the NDC number, 9 both, meaning it showed you which NDC linked to 10 which Economost number, which made that process 11 much easier once I sort of discovered the issue, 12 and I could look back at it somewhat 13 retrospectively. 14 Q. (By Mr. Berlin) You could look back 15 retrospectively because you found the number -- the 16 NDC linked to the Economost number? 17 A. Yes. 18 Q. At what point did you make that link? 19 A. Well, in 2000, the -- what -- McKesson was 20 sort of moving out of the catalog business into the 21 electronic world and they literally told us at some 22 point they would probably quit producing the paper</p>	<p style="text-align: right;">Page 36</p> <p>1 the basis for that allegation? 2 A. I had gone back and looked at those 3 catalogs now that I had the link. And of course I 4 could look at the NDC and the Economost number and 5 look at the catalog and make sure that the 6 description in the catalog fit the description in the 7 electronic catalog to be sure that I was comparing 8 apples to apples and then compare those to the 9 reported prices that we had in Redbook and Blue Book 10 or First Data Bank. 11 Q. Prior to 2000, did Ven-A-Care have any 12 documents which would have enabled it to make that 13 sort of comparison on the prices for the 14 Erythromycins? In other words, could Ven-A-Care have 15 made this determination prior to 2000? 16 A. I guess it would have been possible, but 17 it was -- as I said earlier, it would require a good 18 deal more analysis and it would require the focus on 19 those drugs to see it or dig it out or understand it. 20 Q. Prior to 2000, did Ven-A-Care have any 21 other documents that would have enabled it to make 22 these price comparisons?</p>
<p style="text-align: right;">Page 35</p> <p>1 catalog, that everything would be electronic. And 2 I -- I think the last paper catalog they actually 3 produced was, I think, 2003, meaning they don't 4 produce a paper catalog now. Everything is 5 electronic on this. And they were in the process of 6 transitioning people out of the paper catalogs into 7 the electronic stuff. 8 But I think the electronic version of 9 their catalog allowed me to more readily see the 10 relationships, understand them more readily. They 11 were, I guess in some degree, concealed, not a 12 hundred percent, but became much more apparent when I 13 looked at the electronic version, and -- and that's 14 how I discovered it. 15 Q. In the complaint which we've marked as 16 Exhibit Number 2, in paragraph 49, you allege that 17 the alleged fraud was occurring from at least on or 18 before January 1, 1994. So at the point that you 19 filed the complaint against Abbott, how were you able 20 to make the allegation that these price discrepancies 21 were occurring all the way back to 1994? In other 22 words, what, at the time you were filing this, was</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Well, we had some documents that showed 2 prices on these Ery drugs or -- some or most of the 3 Ery drugs or maybe all. We had, I think, a catalog 4 from Gulf Distributor that was a 1994 catalog. We 5 had the McKesson catalogs. We had, as I recall, two 6 printouts from Bergen Brunswig, one for 1998 and one 7 for 1999 that included the Erythromycin drugs. 8 And we had another mailer from McKesson 9 that we got in 1998 that was, I think, called Prefer 10 RX, from McKesson, which listed, as I recall, the NDC 11 number; and it may have listed the Economost number 12 too. I'm not sure. And it listed the -- just from 13 memory, it lists the McKesson sell price, the usual 14 normal McKesson sell price in one column, and then it 15 listed essentially a discounted column that was, I 16 think, the preferred RX price which was being 17 offered, which I assume is a -- I don't know if there 18 was a contract associated with it or not, but another 19 listing for a lower price in 1998 where you could buy 20 the drug on a contract below the usual McKesson sell 21 price. 22 And I think the McKesson sell price that</p>

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<p style="text-align: right;">Page 38</p> <p>1 was listed in that is also sometimes called the 2 regular cost at McKesson, the noncontract price or 3 sometimes called the catalog list price, meaning it's 4 essentially their nondiscounted price. That's what I 5 can think of right now. There might be more stuff, 6 but those are the ones I can think of right now. 7 Q. Prior to 2000, did Ven-A-Care have any 8 document that within that document there was a 9 comparison of any price on the Erythromycins and the 10 AWP or WAC for the Erythromycin? 11 A. Well, that's an interesting question. 12 Q. Thank you. 13 A. The Gulf Distributor's catalog had a 14 column listed as AWP next to the drug's price. And 15 it's interesting because for many or at least some of 16 the Ery drugs, the price under the AWP column was not 17 the reported AWP but was actually the price that they 18 would sell you the drug for, meaning they were 19 referring to their sale price, their -- the price 20 they would sell you the drug for as average wholesale 21 price. 22 And the other interesting aspect of this</p>	<p style="text-align: right;">Page 40</p> <p>1 wholesale prices, but when we actually started 2 looking at it, for many of the pharmaceuticals, they 3 were not. So they were actually -- what I'm assuming 4 is that wholesaler was saying this is the average 5 price that we sell this drug for at wholesale, I 6 assume. That's -- the column it was listed under was 7 that. 8 Q. So from those documents that you just 9 described, the Gulf Distributor's catalog and the 10 Bergen catalogs, Ven-A-Care was not able to determine 11 the spread between the purchase price available to 12 Ven-A-Care and the reported AWP or reported WAC? 13 A. We would -- to do that comparison, we 14 would have to look at our other pricing sources or 15 the compendium basically, yes. 16 Q. And did -- and just to be clear, it's your 17 testimony that Ven-A-Care did not, in fact, do that 18 prior to 2000? 19 MR. BREEN: Objection, form. 20 THE WITNESS: Not to -- I mean to the best 21 of Ven-A-Care's knowledge at this point in time, 22 we're not aware that we did that, no.</p>
<p style="text-align: right;">Page 39</p> <p>1 is that Bergen, in their printouts in 1998 and 1999, 2 also had a price column next to the drug and the NDC 3 number, and that column was labeled average wholesale 4 price. And it too was the price that they would sell 5 you the drug for and it was not the reported average 6 wholesale price of the drug in all circumstances. In 7 some circumstances it was, and I don't mean with the 8 Ery drugs, but in terms of the greater universe of 9 pharmaceuticals, because we're talking about a front 10 and backside printout that's four inches deep. 11 You know, I don't know. The Econolink 12 system contained prices on about 25,000 13 pharmaceuticals, ballpark. And I'm assuming the 14 Bergen printouts had at least that many, if not more. 15 I haven't done a count to see exactly how many 16 pharmaceuticals are listed in that. 17 But it was interesting that these were 18 wholesalers who were representing their -- the price 19 that they sold the drug to pharmacies at under a 20 column labeled average wholesale price. And it took 21 me a little while to understand that that was going 22 on because I had assumed that those were the reported</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. BREEN: Just for the record, you mean 2 for the Ery drugs, right? 3 THE WITNESS: For the Ery drugs, yes. 4 MR. BERLIN: Yes. 5 THE WITNESS: Yes, for the Ery drugs. 6 MR. BREEN: I withdraw my objection. 7 Q. (By Mr. Berlin) Did Ven-A-Care have any 8 single document -- so I'm drawing the distinction 9 between taking a document and going off to the 10 compendia and trying to do this process that you 11 described is a -- let me just back up. That process 12 you described is a bit laborious, right? 13 A. It would have been a little bit to -- to 14 look at that. Certainly the electronic software, 15 the -- made that process much easier. There's no 16 question that -- that the electronic catalog made 17 looking at that -- because part of the electronic 18 catalog was an AWP column for the drug. 19 Q. And when was the first time that 20 Ven-A-Care got an electronic catalog of any sort? 21 A. The Econolink system we got, as far as I 22 can determine, it looks like about April of 2000,</p>

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<p style="text-align: right;">Page 42</p> <p>1 somewhere in that range.</p> <p>2 Q. Prior to April of 2000 or whenever</p> <p>3 Ven-A-Care got the Econolink system, did it -- did</p> <p>4 Ven-A-Care have any one document, whether that's a</p> <p>5 hard copy document or a page on a database, that</p> <p>6 compared the price at which Ven-A-Care could purchase</p> <p>7 these Erythromycin drugs, or for any of the</p> <p>8 Erythromycin drugs, to the reported AWP or the</p> <p>9 reported WAC to show the spread between those</p> <p>10 numbers?</p> <p>11 A. Right now I cannot think of any. If I</p> <p>12 come up with something in the next day or two, I</p> <p>13 will -- I'll let you know. I can't think of a single</p> <p>14 document right now that has that, except for the</p> <p>15 electronic catalog -- or catalogs actually.</p> <p>16 Q. So the spread information, the difference</p> <p>17 between the -- what you've described as the actual</p> <p>18 price versus the reported AWP was not available to</p> <p>19 Ven-A-Care until April of 2000 without somewhat of a</p> <p>20 laborious process of comparing the two?</p> <p>21 A. I would say that we didn't have that, no.</p> <p>22 That -- that doesn't mean that others didn't, but I'm</p>	<p style="text-align: right;">Page 44</p> <p>1 to approximately when the Econolink system became</p> <p>2 available to other pharmacies?</p> <p>3 A. I think I'll need to look at that to give</p> <p>4 you an answer, and I may need to look at the catalogs</p> <p>5 and other things that we have.</p> <p>6 Q. Why was Ven-A-Care, as you describe, a</p> <p>7 late adopter to that?</p> <p>8 A. We had not been ordering a lot of drugs</p> <p>9 from McKesson, certainly, and McKesson was -- had</p> <p>10 been for many years -- I hate to pigeonhole them</p> <p>11 exactly and say they were a backup wholesaler for us</p> <p>12 because for certain things, they may have been a</p> <p>13 primary wholesaler for us at times. But I think they</p> <p>14 knew that they were not our only source for -- for</p> <p>15 drug pricing or -- and that even during the time</p> <p>16 period when Ven-A-Care was seeing lots of patients,</p> <p>17 they weren't our only primary wholesaler.</p> <p>18 They were -- I guess you could call them a</p> <p>19 backup, but they -- when we needed oral drugs and</p> <p>20 that sort of thing, we typically would buy from them</p> <p>21 or Gulf Distributing. Whereas we might have direct</p> <p>22 contracts with some manufacturers, we might have</p>
<p style="text-align: right;">Page 43</p> <p>1 not aware that -- I'm not aware at this time that we</p> <p>2 had that, although, as I said, I -- if I find</p> <p>3 something, I'll let you know.</p> <p>4 MR. BERLIN: Why don't we take a break to</p> <p>5 change the videotape.</p> <p>6 THE VIDEOGRAPHER: We're off the record at</p> <p>7 10:26 a.m.</p> <p>8 (A recess was taken.)</p> <p>9 THE VIDEOGRAPHER: This is the beginning</p> <p>10 of tape number two. The time is 10:37 a.m. and</p> <p>11 we are back on the record.</p> <p>12 THE WITNESS: The only thing I might add</p> <p>13 is that we were not an early converter to the</p> <p>14 electronic catalog and we knew the electronic</p> <p>15 catalog had -- had been around for a while. And</p> <p>16 it was really a -- it was an old DOS-based</p> <p>17 program that was -- had been modified to work in</p> <p>18 the Windows environment in, you know, that time.</p> <p>19 So we knew that there had been electronic</p> <p>20 catalogs around for some time. Exactly how</p> <p>21 long, I'm not so sure that I know.</p> <p>22 Q. (By Mr. Berlin) Do you have knowledge as</p>	<p style="text-align: right;">Page 45</p> <p>1 purchases from distributors. They're -- I'm just --</p> <p>2 I don't want to clear -- because I think their</p> <p>3 position as a wholesaler for us changed over time and</p> <p>4 literally from day-to-day as to whether if we were</p> <p>5 looking to buy oral drugs, there may have been</p> <p>6 periods of time when they -- we were mainly buying</p> <p>7 from them; but we may not have been buying all of our</p> <p>8 IV drugs from them. So I -- I hope I'm appropriately</p> <p>9 characterizing them.</p> <p>10 MR. BREEN: And actually I don't think</p> <p>11 that -- I would -- to the extent that you're</p> <p>12 asking the witness to give a 30(b)(6) answer as</p> <p>13 to generally Ven-A-Care's purchasing history and</p> <p>14 habits and what have you over time, I'd object</p> <p>15 because I don't think it's within the</p> <p>16 designations. But that said, I'm happy to have</p> <p>17 Mr. Jones or somebody give a more comprehensive</p> <p>18 answer, if you would like.</p> <p>19 MR. BERLIN: That said, I didn't ask him a</p> <p>20 question which actually led to that answer.</p> <p>21 MR. BREEN: Well, that may be part of the</p> <p>22 problem.</p>

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<p style="text-align: right;">Page 46</p> <p>1 MR. BERLIN: So you're objecting that he's 2 going -- I didn't ask anything that went to the 3 purchasing history. 4 MR. BREEN: Okay. At any rate, objection. 5 Objection, nonresponsive. 6 MR. BERLIN: I understand your point. And 7 that's perfectly fine. 8 MR. BREEN: If you need that information, 9 we're going to have to get it from Mr. Jones. 10 MR. BERLIN: That's fine. It's fine for 11 at least now. Let's see how -- how we go. 12 Q. (By Mr. Berlin) So I'm not asking you to 13 put a specific calendar date for this answer, but 14 approximately when is the earliest that Ven-A-Care 15 learned about the -- about any spread for any of the 16 Erys listed in paragraph 33 in the complaint? 17 A. Well, I think, at least right now to the 18 best of our knowledge, when I looked at this 19 relationship in 2000 -- that doesn't mean that 20 someone didn't see it at some earlier time and it 21 didn't click or occur to them or -- or they 22 understood the significance or fully understood it.</p>	<p style="text-align: right;">Page 48</p> <p>1 ceiling fell down and water poured into an area that 2 had boxes and boxes of those things. And they were 3 sitting in water and ruined, so that my ability to go 4 back and look at those invoices, receipts, all of 5 those things is -- I don't have that ability. 6 So we're relying on the memory of the 7 people who, you know, worked at Ven-A-Care that time 8 period when Ven-A-Care was ordering lots of drugs or 9 more drugs from McKesson for -- for that information. 10 Did somebody look at it in 1993 or '94 and realize 11 there was something going on? Maybe. I don't have 12 direct knowledge of that right now, but I also -- 13 unfortunately for me, I'm missing the paperwork that 14 might help me do that. 15 Q. But you're not sitting here testifying 16 that someone in Ven-A-Care knew about the spread 17 information but you all sat on it for a year or a 18 number of years and first started actively 19 investigating it in 2000? 20 A. No, I'm not -- I'm not saying that. I'm 21 also -- I don't know if somebody looked at an invoice 22 and went, huh, gee, I wonder what that is. I</p>
<p style="text-align: right;">Page 47</p> <p>1 But I think right now to the -- you know, to the 2 extent that we can answer that question, I would say 3 2000. 4 Q. And this goes back to what I asked you 5 earlier about, about -- about time and the task list. 6 This wasn't a situation where you knew about this for 7 a few years but you just didn't find the time to 8 develop it; this was the situation where you really 9 first learned about the spread in -- in 2000 on these 10 Ery drugs? Is that your testimony? 11 A. In large degree. We -- you know, we're 12 looking at a wide number of pharmaceuticals, and, you 13 know, that number is characterized in a number of 14 different ways. Some people say 60,000 NDC numbers. 15 Some people say 100,000 NDC numbers are out in the 16 marketplace on a regular basis being looked at by 17 people. Whatever that number is, a large number of 18 drugs. 19 Part of our -- my difficulty in this is 20 that we lost invoices in -- I think it's 1999, 21 Hurricane George, as we've testified about this 22 before. The hurricane hit, the roof leaked, and the</p>	<p style="text-align: right;">Page 49</p> <p>1 don't -- I don't know the answer to that and because 2 of the lack of information. So at least at present, 3 my best answer is the Econolink software led me to 4 see the relationships that we're talking about. 5 Q. And after you saw the relationships, you 6 brought that to the attention of the other owners of 7 Ven-A-Care? 8 A. Yes, I did. 9 Q. And when you brought it to their 10 attention, did they in any way express to you that 11 they had already known about that? 12 A. Not directly, no. 13 Q. What do you mean not directly? 14 A. No, not that I recall. No one jumped up 15 and said, oh, gee, I knew about that spread in 1993 16 or '92 or '91 or whatever. No. 17 Q. Well, directly or indirectly, did they 18 give you -- was there any indication that the 19 co-owners -- and we've referred to them by name 20 before, that the co-owners had known this prior to 21 you bringing it to their attention? 22 A. No.</p>

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<p style="text-align: right;">Page 66</p> <p>1 want me to sit down with him and try to recreate 2 that. 3 MR. BERLIN: Yeah. That's fine. Why 4 don't we skip this question. 5 MR. BREEN: As long as it's clear it's not 6 a 30(b)(6) question. 7 MR. BERLIN: That's correct. 8 MR. BREEN: I'll be happy to help the 9 witness give the best answer possible. 10 MR. BERLIN: That he can give. 11 MR. BREEN: Understanding that -- 12 MR. BERLIN: I appreciate that. 13 MR. BREEN: -- there's a lot of cases. 14 Q. (By Mr. Berlin) And just to be clear, 15 Ven-A-Care does have a financial stake in this 16 litigation, right? 17 A. Yes, sir, like we do in all these qui tam 18 cases, as I understand. And our lawyers certainly 19 have a stake in it. 20 Q. And again, another question to update is 21 is Ven-A-Care still a licensed pharmacy? 22 A. Yes, sir.</p>	<p style="text-align: right;">Page 68</p> <p>1 I familiar with every one of those? No. I guess I'd 2 refer you to the Florida Department of Professional 3 Regulation and their requirements for pharmacy. 4 Mr. Cobo, who is our pharmacist, really 5 deals with that matter, and my experience with it is, 6 I would say, peripheral. I know he does it. I know 7 that he maintains it, but I don't know all the hoops 8 he jumps through. 9 Q. Does Ven-A-Care have to pay any fee to the 10 State of Florida or to anyone to maintain the 11 license? 12 A. Every license I've ever got in the State 13 of Florida had some fee associated with it, yes. 14 Q. And is it still true that Ven-A-Care has 15 not seen a patient since approximately 1998? 16 MR. BREEN: Objection to form. 17 THE WITNESS: I think that would probably 18 be correct. I think that's been testified to 19 many times before, and I'm not aware of any -- 20 any new ones, no. 21 Q. (By Mr. Berlin) That's what I was getting 22 at. You did testify to that on page 169 of your</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. And what does that mean to be a licensed 2 pharmacy? 3 A. It means that we have met the State of 4 Florida's requirements for a pharmacy license. 5 Q. And can you describe for the jury, just in 6 general terms, what those requirements are? 7 A. Is this part of the designation or no or 8 is this something different? 9 Q. These areas that I'm going into right now 10 are just some background information that -- 11 A. Okay, cause I can't tell you that I 12 prepared -- 13 Q. That's okay. 14 A. -- for this. 15 Q. That's fine. And I'll -- specifically for 16 everyone's comfort, I'll specifically designate this 17 as outside the 30(b)(6). So if you can answer that 18 just to the best of your personal knowledge. 19 A. Well, my -- I think you have to either 20 have or employ a pharmacist who has the appropriate 21 training and licensure and then you have to meet a 22 variety of standards set up by the Florida board. Am</p>	<p style="text-align: right;">Page 69</p> <p>1 deposition. And really what I was asking is, is that 2 still true in a sense that since that time, 3 Ven-A-Care has not seen patients? 4 MR. BREEN: Objection to form. 5 THE WITNESS: Well, I don't think we 6 have -- yes. I don't think we have any new 7 ones, no. 8 Q. (By Mr. Berlin) So why has Ven-A-Care 9 maintained its pharmacy license if it's not seeing 10 any patients? 11 A. Well, for a number of reasons. We have 12 over the years many times talked about getting back 13 into the pharmacy business in different ways. And I 14 think some of this has been talked about, but we want 15 that opportunity and availability. Certainly we are 16 interested in the pharmaceutical world. We're 17 interested in pharmaceutical pricing and in 18 particular we're interested in fraud, what we 19 perceive as fraud by manufacturers. 20 So I think we want to main -- much like I 21 maintain my medical license. I'm not doing a lot of 22 orthopedics, but I do my continuing medical education</p>

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<p style="text-align: right;">Page 102</p> <p>1 Now, sometimes, you know, I think that 2 manufacturers became sensitized to whether what 3 they were doing was correct at some point in 4 time. Ven-A-Care has been banging the -- you 5 know, banging around on the AWP issue for a long 6 long time now. So some of them became more 7 cautious about how their marketing the spread 8 was done or occurred. 9 But that -- it's the nature of it that -- 10 that when you can compare the typical 11 reimbursement prices to your acquisition cost, 12 you're looking at this saying, hey, this is a 13 nice opportunity, wonder how long it will last, 14 maybe forever, maybe not. I don't know. 15 Q. (By Mr. Berlin) Does Ven-A-Care believe 16 that the Econolink software markets the spread? 17 A. I believe that, yes. Ven-A-Care believes 18 that, yes. 19 Q. And does Ven-A-Care -- am I pronouncing 20 your company as Ven-A-Care or Ven-A-Care? 21 A. Either one will do. 22 Q. Does Ven-A-Care have any specific evidence</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Let's -- let's -- could you pull that out 2 and we'll mark that as an exhibit? 3 MR. BREEN: Why don't we go off the 4 record. 5 THE WITNESS: Actually I don't know if I 6 do. Let me see. 7 MR. BREEN: He doesn't have it. I can get 8 access to it electronically. 9 Q. (By Mr. Berlin) Okay. Well, let's 10 continue and we'll come back to that. 11 A. Okay. 12 Q. Okay. Does Ven-A-Care know of an Abbott 13 employee who specifically market the spread on the 14 Ery NDCs? 15 A. Well, I guess we would -- we would say I 16 think two things: Did we talk to an Abbott employee 17 specifically who marketed the spread to us? And I 18 would say no. But I think at the same time 19 Ven-A-Care assumes that -- and believes that whoever 20 was marketing the Erythromycin drugs, these Ery 21 drugs, for Abbott knew that he was creating these 22 inducements and putting them out in the marketplace</p>
<p style="text-align: right;">Page 103</p> <p>1 that Abbott knew about -- knew that this software 2 marketed the spread? 3 MR. BREEN: Objection to form. 4 THE WITNESS: You know, I might want to 5 take a minute and look at a document or two 6 before I answer that question. 7 Q. (By Mr. Berlin) Okay. 8 A. And I can do it now or I can do it at the 9 lunch break. 10 Q. Which documents do you need to look at to 11 be able to answer that question? 12 A. Well, I might want to look at at least one 13 of our GPO contracts before I answer. I don't -- you 14 know, I -- I try to remember a lot of things. 15 Q. I'm not faulting you. I just want to know 16 what documents you need to look at. The GPO 17 contract. What else would you look at to help you 18 answer that question? 19 A. Right now that would be the thing I would 20 be most interested in looking at is that. 21 Q. Do you have that with you? 22 A. I think I do.</p>	<p style="text-align: right;">Page 105</p> <p>1 for pharmacies to appreciate. So we would assume 2 that -- we believe that the marketing team, whoever 3 those people are that are responsible at Abbott, know 4 their marketing spread. 5 Q. And in that situation that you just 6 described, is that what Ven-A-Care previously has 7 referred to as where the spread markets itself? 8 MR. BREEN: Objection to form. 9 THE WITNESS: I think people have said 10 that, but I think it's really -- it's probably 11 even -- I mean, it's more detailed than that. 12 So I think what I've talked about is that 13 pharmacists are in the spread business. When 14 you create spreads for them and put them out in 15 the marketplace, pharmacists will find them. To 16 suggest that they don't look for them or they 17 won't find them is ridiculous. And I would just 18 say that manufacturers that do that need to 19 beware. It's ridiculous to take that position, 20 in our mind. 21 Q. (By Mr. Berlin) And other than what 22 you've just described, does Ven-A-Care have any</p>

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<p style="text-align: right;">Page 106</p> <p>1 specific knowledge of an Abbott employee who marketed 2 the spread on Ery? 3 MR. BREEN: Objection to form. 4 THE WITNESS: We did not have a specific 5 conversation with an Abbott employee who 6 marketed the spread to us on the Erythromycin 7 oral drugs. 8 Q. (By Mr. Berlin) And beyond an employee 9 communicating with Ven-A-Care, does -- and putting 10 aside what you've described as that Abbott must have 11 known by setting these prices, does Ven-A-Care have 12 any knowledge of an Abbott employee marketing the 13 spread to a pharmacy other than Ven-A-Care? 14 A. Not including information that were 15 involved in investigations, I assume, meaning prior 16 to any investigations? 17 Q. No. I'm asking you sitting here right now 18 about Ven-A-Care's knowledge. Does Ven-A-Care -- 19 A. As of today, right now? 20 Q. Yes. 21 A. After Texas investigations and discovery 22 documents and all of those things?</p>	<p style="text-align: right;">Page 108</p> <p>1 knowledge concerning pricing, marketing and 2 reimbursement of the subject drugs, how 3 Ven-A-Care utilized or acquired the knowledge; 4 and the other topic is Ven-A-Care's knowledge, 5 if any, of Abbott's price reporting and 6 marketing practices for the subject drugs. It 7 didn't ask as to a certain date. I mean, it's 8 open-ended. 9 MR. BREEN: We've got objections to it. 10 So we could either stand on the objections -- 11 MR. BERLIN: Well, you never objected 12 based on that. 13 MR. BREEN: Stand on the objections and 14 have the court determine it. He's going to 15 answer this question to the best of his ability. 16 I'm just saying I don't think that this 30(b)(6) 17 witness is required to marshal discovery 18 evidence. 19 MR. BERLIN: That's fair enough. 20 Q. (By Mr. Berlin) But give me your 21 understanding of -- sitting here today, answer it as 22 well as you can.</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Absolutely, I'm asking you for that, and 2 I'm asking you -- Dr. Lockwood, let me be clear. I'm 3 asking you -- putting aside your point that these 4 spreads -- that the pharmacists know about the 5 spreads, they find them, and putting aside the point 6 that no Abbott employee has marketed the spread 7 directly to Ven-A-Care, I'm asking you do you know, 8 have any information about an Abbott employee going 9 out and marketing the spread on any of the Erys named 10 in this complaint to any other pharmacy? 11 MR. BREEN: Objection, form. 12 THE WITNESS: I'm now free to talk about 13 discovery documents that Abbott has produced? 14 Q. (By Mr. Berlin) If you know about them, 15 yes. 16 MR. BREEN: Understand this is not -- I've 17 not prepared him as a 30(b)(6) witness to talk 18 about information that's been produced in 19 discovery. He's got knowledge of it. I'll let 20 him testify about it. 21 MR. BERLIN: Wait a minute. It's -- I 22 mean, the topic is unequivocal, Ven-A-Care's</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Well, first of all, I recall seeing 2 discovery documents from Abbott where there was 3 discussion about how we're going to market these Ery 4 drugs to retail buying groups. And there was a 5 group -- I can't name the names; I don't have them. 6 Q. Let me -- actually let me try to simplify 7 this a little bit, cause I'm not -- I understand how 8 you're answering this, and I apologize for 9 interrupting your answer, but let me see if I can 10 take care of Mr. Breen's objection and simplify this 11 a little bit. 12 A. Okay. 13 Q. Do you have any knowledge of, specific 14 knowledge of an Abbott employee, not based just on 15 internal documents, but actually going out and 16 marketing the spread? Have you heard of that from 17 another pharmacist or from any other source that an 18 employee actually went out and marketed the spread on 19 Erythromycin? 20 MR. BREEN: Objection, form. 21 THE WITNESS: Well -- and I hope I'm 22 answering this within the parameters that you're</p>

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<p style="text-align: right;">Page 110</p> <p>1 talking about -- an Abbott employee, as I 2 recall, Mr. Fiske, when he was deposed in the 3 Texas case, we explained to Mr. Fiske the issue 4 of Abbott's reported WACs to the compendia and 5 that states used those WACs; and we discussed in 6 detail during that deposition, as I recall, what 7 Abbott termed its base deal pricing to 8 wholesalers.</p> <p>9 And he was asked specifically if he 10 understood how Medicaid programs could be 11 confused by his positions and that Medicaid 12 programs might be confused by his differing 13 representations of WAC, that it would have some 14 impact upon them; and he ultimately answered 15 something along the lines of, yes, I understand 16 how they could be confused by that.</p> <p>17 So, to me, that was Mr. Fiske saying, 18 yeah, we -- we created a reported WAC, we -- we 19 had a different real transaction price and -- to 20 wholesalers and, gee, I understand that that 21 could have had some impact on Medicaid programs 22 and confused them.</p>	<p style="text-align: right;">Page 112</p> <p>1 any knowledge of any Abbott employee specifically 2 talking to a pharmacy about the spreads on Ery? 3 MR. BREEN: Objection, form. 4 THE WITNESS: I guess if we're including 5 all the Abbott discovery, I would say that I'm 6 not -- I don't know that I am adequately 7 prepared to answer that in terms -- based on all 8 the discovery that's been done. I don't think 9 anyone at Ven-A-Care knows specifically of a 10 Abbott person outside of discovery in these 11 cases that went and talked to a pharmacist. 12 Q. (By Mr. Berlin) Could you look back at 13 the complaint and look at the -- it's actually page 14 2, the sentence before the header one. It's on -- 15 it's not a numbered paragraph. It says, these 16 efforts allowed Abbott to increase its profits by 17 boosting sales for its drugs. 18 A. Yes. 19 Q. What is Ven-A-Care's evidence that these 20 efforts allowed Abbott to increase its profits? 21 A. Well, I would say the entire argument that 22 I made probably in the past 20 or 30 minutes that by</p>
<p style="text-align: right;">Page 111</p> <p>1 And at least in my mind, that's him 2 admitting that that -- the inducement he 3 created. And did he go out and do it? I think 4 he stayed right at Abbott and did it. The 5 inducement he created, he understood how that 6 could have an effect upon the programs and 7 reimbursement. And to me, that's him admitting 8 he's marketing the spread when he sets those 9 prices.</p> <p>10 Now, beyond that, in terms of walking out 11 and talking to a pharmacy specifically, I don't 12 know that he did that to the Ery drug 13 specifically, but this gentleman negotiates a 14 lot of different prices for Abbott's drugs. He 15 sometimes bundles drugs, it appears to me. He 16 sometimes bundles the Ery drugs with other 17 drugs. Those things look like, you know, 18 inducement marketing to me. I see them doing 19 that. I hope -- I don't know if that answers 20 your question adequately or not, but that would 21 be my interpretation of those things. 22 Q. (By Mr. Berlin) And does Ven-A-Care have</p>	<p style="text-align: right;">Page 113</p> <p>1 putting these spreads out in the marketplace and 2 creating larger spreads than normal, that they're 3 creating an inducement in the marketplace that 4 ultimately leads to more purchases of their 5 pharmaceuticals, and as such, Abbott benefits by 6 that.</p> <p>7 It's -- I suspect that manufacturers make 8 decisions about setting prices and how they set 9 prices, and they do that in an effort to always 10 maximize their profits. I find it hard to believe 11 that -- that -- that manufacturers such as Abbott do 12 anything other than set prices to maximize their 13 profits. It's what they do.</p> <p>14 And when they create increased spreads 15 like these -- they did for the Ery drugs, when 16 they're not doing that for the other drugs at PPD, I 17 think they're doing that to increase their 18 utilization in profits; because if nobody buys their 19 drug, I don't think they make any money. 20 Q. Any other evidence to support that 21 allegation? 22 A. Other evidence, including discovery</p>

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<p style="text-align: right;">Page 182</p> <p>1 interrogatory answer.</p> <p>2 A. Okay.</p> <p>3 Q. And it says that Abbott contracted with</p> <p>4 the GPOs, wholesale source programs and chain</p> <p>5 pharmacies for the expressed purpose. And let me</p> <p>6 under -- is your understanding of expressed purpose,</p> <p>7 does that mean expressly written or expressly stated?</p> <p>8 I mean are there documents? Is there a time when you</p> <p>9 understand that Abbott spoke to these folks or had a</p> <p>10 written contract that specifically said you will</p> <p>11 market the spread?</p> <p>12 MR. BREEN: Objection to form.</p> <p>13 THE WITNESS: I will need to investigate</p> <p>14 this further, but it would appear that the</p> <p>15 Leader program that's mentioned in here looks</p> <p>16 like it's a spread marketing tool that -- where</p> <p>17 you're comparing profitability.</p> <p>18 Q. (By Mr. Berlin) And that's whether</p> <p>19 something exists. The question is whether Abbott</p> <p>20 contracted with the GPO to -- for the expressed</p> <p>21 purpose of marketing the spread?</p> <p>22 MR. BREEN: I'll object that you</p>	<p style="text-align: right;">Page 184</p> <p>1 reading testimony. I mean witnessing with one's --</p> <p>2 one's five senses. Has anyone from Ven-A-Care ever</p> <p>3 witnessed an Abbott representative marketing the</p> <p>4 spread on Ery?</p> <p>5 MR. BREEN: Objection to form.</p> <p>6 THE WITNESS: Not to us directly.</p> <p>7 Q. (By Mr. Berlin) Well, to anyone.</p> <p>8 A. That we know of, no. I -- I mean, that</p> <p>9 gets complicated though. I -- I mean, I would -- no.</p> <p>10 I think I need to know more. We have -- as I said, I</p> <p>11 think there's a thing called Prefer RX where, you</p> <p>12 know, McKesson is circulating a contract discounted</p> <p>13 price, and I got to believe that Abbott knows they're</p> <p>14 circulating that contract price.</p> <p>15 They have this retail buying group thing</p> <p>16 they're sending out trying to stir up retail buying</p> <p>17 group purchases at that time. And, you know, those</p> <p>18 are probably marketing-the-spread-type documents.</p> <p>19 Now, is there a person associated with it? Somewhere</p> <p>20 somebody sent that out. Did I see the person do it?</p> <p>21 No. I -- I mean, I think we have a lot of documents</p> <p>22 that we perceive as spread-marketing documents.</p>
<p style="text-align: right;">Page 183</p> <p>1 interrupted the witness again.</p> <p>2 MR. BERLIN: Well, okay. Fine.</p> <p>3 Q. (By Mr. Berlin) Go ahead, Dr. Lockwood.</p> <p>4 MR. BREEN: And, therefore, move to strike</p> <p>5 his last answer since it was incomplete.</p> <p>6 THE WITNESS: I'll need to look at this</p> <p>7 some more. I have to read the answer here. I'm</p> <p>8 sorry.</p> <p>9 Q. (By Mr. Berlin) Okay. Well, you know,</p> <p>10 I'm going to add this to what I'd like to discuss</p> <p>11 tomorrow.</p> <p>12 A. Okay. Are we making a list?</p> <p>13 MR. BREEN: Uh-huh, and then we're going</p> <p>14 to go over it before we end today.</p> <p>15 Q. (By Mr. Berlin) Did you personally ever</p> <p>16 witness an Abbott representative marketing the spread</p> <p>17 on Ery?</p> <p>18 A. No, not to us. No. No, and -- no, I</p> <p>19 haven't seen an Abbott -- I mean, other than what I</p> <p>20 might construe testimony to mean in the litigation;</p> <p>21 outside of that, no.</p> <p>22 Q. And when I say witness, I don't mean</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Well --</p> <p>2 A. Seeing an individual market it is</p> <p>3 different than that.</p> <p>4 Q. And does anyone at Ven-A-Care have any</p> <p>5 personal knowledge about an Abbott representative</p> <p>6 going into a pharmacy and specifically marketing Ery,</p> <p>7 whether it's marketing the spread or any sort of</p> <p>8 marketing of Ery?</p> <p>9 MR. BREEN: Objection to form.</p> <p>10 THE WITNESS: I don't know that we know of</p> <p>11 a human being who walked in and did that that</p> <p>12 we're familiar with.</p> <p>13 Q. (By Mr. Berlin) And isn't it true in the</p> <p>14 1990s that all sellers of Erythromycins had spreads?</p> <p>15 MR. BREEN: Objection, form.</p> <p>16 THE WITNESS: They may have. They may</p> <p>17 have, depends on when and where, but they may</p> <p>18 have, yes.</p> <p>19 Q. (By Mr. Berlin) Do you know how Abbott</p> <p>20 spreads on Ery compared to other companies' spreads</p> <p>21 on Ery?</p> <p>22 A. I have not specifically studied that, no.</p>

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<p style="text-align: right;">Page 242</p> <p>1 about in about 1998 or '99, as I recall. We at one 2 point gave that logon to the government so they could 3 log on to Innovatix, and I think that included Rob 4 Vito at the OIG so they could look at some of these 5 things. 6 Q. Do you know when you provided this to 7 folks in the federal government? 8 MR. BREEN: Objection to form. What is 9 "this" specifically? 10 MR. BERLIN: He just said that they 11 provided password to Innovatix. 12 Q. (By Mr. Berlin) So when did you provide 13 that password and when did you -- when did you 14 provide access for the federal government? 15 A. I believe in 1998. You want the exact 16 date, I think we can get that document. 17 Q. And at the time that you -- 18 A. I think I've seen that document in the 19 past few days, I believe. It's a document that I 20 think I have seen. 21 Q. Do you know whether prior to -- at any 22 time prior to 2000 -- back up a second. You</p>	<p style="text-align: right;">Page 244</p> <p>1 know, we analyze drug pricing a lot, but there are a 2 lot of drugs to analyze. 3 So the connection, as I recall, to 4 Innovatix was relatively slow and there was no way to 5 log on and say print all the NDCs for me. That -- I 6 don't think there was that option. So we looked 7 periodically at the Innovatix website for things as a 8 pricing source, information source. 9 Q. Do you know when Abbott Ery, PPD Erys 10 first showed up on the either Greater New York or 11 Innovatix.com? 12 A. I don't know exactly. I can say that they 13 were certainly there on this date. If they were 14 there before that, it wouldn't surprise me. In fact, 15 I would expect that they were there somewhat before 16 that, certainly the day before, probably, but -- and 17 we have lots of pieces of paper because sometimes 18 these people do announce to you when they sign a 19 contract with a new manufacturer and sometimes they 20 don't. It's just that simple. 21 If they think it's a big deal, sometimes 22 they announce it. They send out -- it's part of</p>
<p style="text-align: right;">Page 243</p> <p>1 testified earlier that you first discovered the -- 2 what you're alleging to be fraud with respect to the 3 Erythromycin pricing in 2000. Do you know whether 4 spreads on the Ery drugs were available through the 5 Innovatix.com website prior to 2000? 6 A. My understanding is I don't think they 7 were. We had and we produced a rather extensive item 8 catalog for -- I think in 1998 it was labeled Greater 9 New York Hospital Association, but I know it was a 10 1998 publication. And it included Abbott's Hospital 11 Products Division drugs, but I don't believe -- I'm 12 relatively sure, in fact, that it did not include the 13 Pharmaceutical Products Division drugs. 14 Q. Do you know when the -- so -- ask another 15 question. Was that simply a situation that the 16 Abbott Ery, the PPD Erys were not available through 17 this GPO; they didn't have a deal for them? 18 A. That may be the case. I just know that we 19 didn't have a price for it in that particular catalog 20 and the, you know, Abbott Ery drugs were not exactly 21 on my radar screen at that point in time. I'm 22 looking at this stuff sometimes retrospectively. You</p>	<p style="text-align: right;">Page 245</p> <p>1 their marketing for the manufacturer that they say, 2 well, you know, look how lucky you are, you now have 3 this manufacturer's prices available to you. 4 Q. Let me ask one quick question which may 5 help us streamline things for tomorrow. I know that 6 you -- that Ven-A-Care made several presentations to 7 states and the federal government and NMFCUs, and 8 some of those presentations were prior to 2000. 9 Given your testimony today that you had no knowledge 10 about the Ery spreads prior to that time, am I 11 correct that Ery was never mentioned in any 12 presentation prior to 2000? 13 A. I'm not aware that it was. I really think 14 that I first focused on this in the 2000 time frame, 15 specifically, and that doesn't mean that we didn't 16 know that Abbott had Ery drugs or that there -- you 17 know, that there may or may not be discounting on 18 them or whatever. 19 But I think I could say that in 2000 is 20 the first time I really sat down and did a hard 21 analysis of what was occurring in the marketplace 22 with the Ery drugs. And in general, presentations to</p>

62 (Pages 242 to 245)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL NO. 1456
PRICE LITIGATION) CIVIL ACTION:
THIS DOCUMENT RELATES TO) 01-CV-12257-PBS
U.S. ex rel. Ven-A-Care of) Judge Patti B. Saris
the Florida Keys, Inc. v.)
Abbott Laboratories Inc.,) Chief Magistrate Judge
No. 07-CV-11618-PBS) Marianne B. Bowler

HIGHLY CONFIDENTIAL

CONTINUED VIDEOTAPED 30(b)(6) DEPOSITION OF
JOHN M. LOCKWOOD, M.D.

Volume II

(Taken by Defendant Abbott Laboratories Inc.)

April 24, 2009

9:44 a.m.

Suite 800

1420 Peachtree Street, N.E.

Atlanta, Georgia

Reported by: F. Renee Finkley, RPR, CRR, CLR,
CCR-B-2289

14 (Pages 308 to 311)

<p style="text-align: right;">308</p> <p>1 system.</p> <p>2 (Exhibit Lockwood Ery 012 was</p> <p>3 marked for identification.)</p> <p>4 Q. (By Mr. Berlin) Now, I'm getting into,</p> <p>5 Dr. Lockwood, some of the documents that we provided</p> <p>6 to Ven-A-Care on disk in advance of the deposition</p> <p>7 and specifically listed in our topic number 13. I'm</p> <p>8 providing you these copies. If you happen to have</p> <p>9 brought another copy that is easier for you to</p> <p>10 reference, you're welcome to use those, but I just --</p> <p>11 we gave those to you well in advance and I just am</p> <p>12 bringing it to your attention that we're going to get</p> <p>13 into those now.</p> <p>14 MR. BREEN: We don't have hard copies with</p> <p>15 us. We've been looking at them electronically</p> <p>16 just because we got so much paper, so if you've</p> <p>17 got hard copies, it will be helpful.</p> <p>18 MR. BERLIN: Whatever is convenient for</p> <p>19 you guys, but I'm going to mark them as</p> <p>20 exhibits. I just wanted to --</p> <p>21 MR. BREEN: Okay. Good.</p> <p>22 MR. BERLIN: And maybe -- I don't know</p>	<p style="text-align: right;">310</p> <p>1 recollections, no one was aware of this document at</p> <p>2 Ven-A-Care until it was provided to us.</p> <p>3 Q. And on page 147 you'll see there's the</p> <p>4 italicized heading Actual Acquisition Cost, and then</p> <p>5 the next paragraph under that states, under the</p> <p>6 pricing system now prevalent in the drug industry,</p> <p>7 the published wholesale price of a drug product is</p> <p>8 subject to a complex system of frequently changing</p> <p>9 discounts, including discounts based on the purchase</p> <p>10 of other drug products, and cumulative discounts</p> <p>11 based on the volume that may be computed after the</p> <p>12 end of the accounting year.</p> <p>13 I don't mean to be cheeky by asking this</p> <p>14 since this is a document from 1969, but I just need</p> <p>15 to get this formally on the record. Does Ven-A-Care</p> <p>16 contend that it was the original source of this</p> <p>17 particular information that I just read?</p> <p>18 MR. BREEN: Objection, form.</p> <p>19 THE WITNESS: I guess I don't know what</p> <p>20 you mean by are we the original source of this</p> <p>21 information. I don't think I understand that</p> <p>22 as -- if it's a legal concept, I don't</p>
<p style="text-align: right;">309</p> <p>1 that I'll mark all of them, but, you know, we</p> <p>2 just wanted to give you the range.</p> <p>3 Q. (By Mr. Berlin) The first one that we've</p> <p>4 marked as Exhibit Number 12 is a memorandum to the</p> <p>5 secretary from Phillip R. Lee dated February 7, 1969</p> <p>6 under the U.S. -- United States Government Department</p> <p>7 of Health, Education and Welfare, Office of the</p> <p>8 Secretary. Could you turn to page 147 of the</p> <p>9 document?</p> <p>10 First of all, let me just ask you</p> <p>11 generally, did you get an opportunity prior to today</p> <p>12 to review those documents that we had provided to</p> <p>13 you?</p> <p>14 A. Yes, I reviewed these several days ago.</p> <p>15 Yes.</p> <p>16 Q. Had you seen the document that we've</p> <p>17 marked as Exhibit 12 prior to us providing it to you?</p> <p>18 And again, let me just clarify that we're now</p> <p>19 formally back in your role as a 30(b)(6) corporate</p> <p>20 representative.</p> <p>21 A. Ven-A-Care was not aware of this document</p> <p>22 or, you know, to our best understanding or</p>	<p style="text-align: right;">311</p> <p>1 understand what you mean by original source of</p> <p>2 this information. I assume whoever wrote this</p> <p>3 wrote it. I don't -- Ven-A-Care did not write</p> <p>4 this in 1969. It was written by whoever,</p> <p>5 whoever is listed here.</p> <p>6 MR. BERLIN: And let me just pause and</p> <p>7 talk to you Jim. One thing you said yesterday</p> <p>8 was that as Ven-A-Care's -- and I don't mean</p> <p>9 to -- you can correct me if I say this wrong,</p> <p>10 that some or all of these documents are not</p> <p>11 public disclosures as defined by The Act. Is</p> <p>12 that correct?</p> <p>13 MR. BREEN: Our position is that these</p> <p>14 documents -- none of these documents are public</p> <p>15 disclosures as defined by the False Claims Act</p> <p>16 that Ven-A-Care's allegations or actions were</p> <p>17 based upon.</p> <p>18 MR. BERLIN: And is that something that</p> <p>19 Dr. Lockwood is prepared to testify on or do you</p> <p>20 view that solely as a -- I guess let me just ask</p> <p>21 that.</p> <p>22 MR. BREEN: I think Dr. Lockwood is</p>

<p style="text-align: right;">320</p> <p>1 acquisition cost, if that term was available at</p> <p>2 the time, or AWP. But I think I'm going to take</p> <p>3 it as what it says, listed wholesale prices.</p> <p>4 Q. (By Mr. Berlin) Well, do you know to</p> <p>5 which listed wholesale prices they were referring to</p> <p>6 in this document?</p> <p>7 A. Well, I mean, I --</p> <p>8 MR. BREEN: Objection, form.</p> <p>9 THE WITNESS: I think they have it listed</p> <p>10 as listed wholesale price and it's 1969 and I'm</p> <p>11 going to -- I can't interpret. I don't know</p> <p>12 what they knew. It may have included AWP. I --</p> <p>13 I don't know. They're saying listed wholesale</p> <p>14 prices. I guess I got to take it for what it --</p> <p>15 what it says.</p> <p>16 MR. BREEN: By the way, just for the</p> <p>17 record, Eric, I've asked Alison offline here to</p> <p>18 check and you say we didn't provide any</p> <p>19 objections, but we objected as follows: The</p> <p>20 designation mischaracterizes and misstates the</p> <p>21 law and relative burdens on the parties relating</p> <p>22 to the original -- to original source and</p>	<p style="text-align: right;">322</p> <p>1 Q. I guess the question is did you read the</p> <p>2 document?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Could you turn to the number up in the</p> <p>5 upper right-hand corner, 9761?</p> <p>6 A. I might note it was a lot of reading.</p> <p>7 Yes, sir.</p> <p>8 Q. What is your understanding of the table</p> <p>9 that is on this page?</p> <p>10 A. I'm going to need to re-read some of this</p> <p>11 to give you the answer to that. This is a discussion</p> <p>12 in a chart of what appears to be the pharmaceutical</p> <p>13 reimbursement board at, I guess, HHS or HCFA; and</p> <p>14 they're discussing adjusting the federal MAC,</p> <p>15 sometimes called the federal upper limit, and looking</p> <p>16 at information to them from the marketplace and</p> <p>17 trying to set what is essentially a ceiling price so</p> <p>18 that they will not pay more than a certain amount, a</p> <p>19 ceiling. And they're talking about adjusting those</p> <p>20 prices periodically based on updated information.</p> <p>21 Q. What was the updated information they were</p> <p>22 suggesting using?</p>
<p style="text-align: right;">321</p> <p>1 probably disclosure and potentially the</p> <p>2 allegations of The Relator's qui tam complaints.</p> <p>3 So we've been telling you from the time we</p> <p>4 filed our objections that we think you're</p> <p>5 misstating it. But that said, I prepared him to</p> <p>6 do the best job he can in responding to all of</p> <p>7 your questions.</p> <p>8 MR. BERLIN: That ignores the month of</p> <p>9 communications back and forth that occurred</p> <p>10 after you served those objections.</p> <p>11 (Exhibit Lockwood Ery 013 was</p> <p>12 marked for identification.)</p> <p>13 Q. (By Mr. Berlin) Dr. Lockwood, we've</p> <p>14 marked as Exhibit 13 the -- this GAO report on</p> <p>15 Effects of MAC Program on Prescription Drug Cost</p> <p>16 dated December 31, 1980. Had Ven-A-Care seen this</p> <p>17 document prior to receiving a copy from us?</p> <p>18 A. To the best of our knowledge, the answer</p> <p>19 is no, we had not seen it or relied on it.</p> <p>20 Q. And did you have an opportunity to read</p> <p>21 the document?</p> <p>22 A. I did.</p>	<p style="text-align: right;">323</p> <p>1 A. It says, HHS officials told us they</p> <p>2 eyeballed the statistics received monthly from IMS to</p> <p>3 determine if the drug can still be obtained at the</p> <p>4 MAC limit. These statistics stratify what about</p> <p>5 1,600 pharmacists across the nation pay for the</p> <p>6 largest selling 300 drugs during a selected period.</p> <p>7 For example, the statistics would show the amount at</p> <p>8 or which about 10 percent of the 1,600 pharmacists</p> <p>9 purchase a particular drug and 20 percent purchased</p> <p>10 the drug and so on through the 90th percentile.</p> <p>11 So they're using IMS data, and I think in</p> <p>12 here as well -- let me go back. I think they're</p> <p>13 using -- in accumulating information for the board's</p> <p>14 use, the HCFA personnel used several source</p> <p>15 materials, including IMS America Limited, a private</p> <p>16 corporation, Market Data, Drug Tropics -- Topics</p> <p>17 Redbook and the Blue Book listings of wholesale drug</p> <p>18 prices, Physicians Desk Reference and others in</p> <p>19 identifying market volume and most commonly purchased</p> <p>20 package sizes. The IMS data are the only source</p> <p>21 material used. So that's apparently what they used.</p> <p>22 Q. Do you have an understanding as to what</p>

<p style="text-align: right;">328</p> <p>1 set?</p> <p>2 A. Well, I -- I think I would just say what</p> <p>3 they said, which is when they used their criteria,</p> <p>4 they felt they could lower this MAC, and -- and they</p> <p>5 claim using this informal criteria that they could</p> <p>6 lower the MAC. And once again that's looking at -- I</p> <p>7 don't know how many manufacturers were making</p> <p>8 Erythromycin stearate at that point in time, but it</p> <p>9 sounds like multiple, and there were apparently</p> <p>10 significant price differences between those multiple</p> <p>11 manufacturers.</p> <p>12 Q. Did Ven-A-Care provide any information to</p> <p>13 the government that was used to create this report?</p> <p>14 A. In December 1st, 1980, no.</p> <p>15 (Exhibit Lockwood Ery 014 was</p> <p>16 marked for identification.)</p> <p>17 Q. (By Mr. Berlin) We've put before you</p> <p>18 Exhibit 14, which is a transmittal containing an OIG</p> <p>19 report dated September 1994 entitled Changes to the</p> <p>20 Medicaid Prescription Drug Program Could Save</p> <p>21 Millions.</p> <p>22 MR. BREEN: Objection. The one I've got</p>	<p style="text-align: right;">330</p> <p>1 generally, what, in general terms, is your</p> <p>2 understanding of this document? I'm not asking for a</p> <p>3 dissertation on it, just a sentence or two.</p> <p>4 MR. BREEN: Objection, form.</p> <p>5 THE WITNESS: Well, I would need to</p> <p>6 refresh my memory about this. As I recall, I</p> <p>7 had 22 of these documents or something like that</p> <p>8 and -- and I read them but I need to --</p> <p>9 Q. (By Mr. Berlin) Well, that's fine. I'll</p> <p>10 withdraw --</p> <p>11 A. -- go back over them.</p> <p>12 Q. My question is can you sit here without</p> <p>13 doing that, and your answer is no, so let's move into</p> <p>14 the document. Can you turn to page 3 of the</p> <p>15 document. It's -- three is in the center of the</p> <p>16 bottom you'll see. And do you see in the first</p> <p>17 paragraph, oh, maybe about nine lines down, there's a</p> <p>18 new sentence that reads, within the pharmaceutical</p> <p>19 industry, AWP means nondiscounted list price.</p> <p>20 Pharmacies purchasing drugs at prices that are</p> <p>21 discounted significantly below AWP or list price. I</p> <p>22 think I misread that. Pharmacies purchase drugs at</p>
<p style="text-align: right;">329</p> <p>1 says September 1984. I think you said '94.</p> <p>2 MR. BERLIN: Oh, I misspoke then. Thank</p> <p>3 you. 1984.</p> <p>4 THE WITNESS: Yes.</p> <p>5 Q. (By Mr. Berlin) Has Ven-A-Care seen this</p> <p>6 document previously? And in particular, what I'm</p> <p>7 referring to is the 1984 OIG report, whether in this</p> <p>8 particular form or another form.</p> <p>9 A. Let me just make sure I'm looking at the</p> <p>10 right one for just a second. Once again, we, to the</p> <p>11 best of our knowledge, were not aware of this report</p> <p>12 and did not make use of the report until it was given</p> <p>13 to us by Abbott.</p> <p>14 Q. Meaning earlier this year or a few months</p> <p>15 ago?</p> <p>16 A. Yes. Yes. We didn't rely on this report</p> <p>17 and we did not -- no one recalls reading this report</p> <p>18 that I'm aware of.</p> <p>19 Q. And you did read it prior to today?</p> <p>20 A. Yes, sir, I did read it, but there's a</p> <p>21 lot -- a lot of reading here. Go ahead.</p> <p>22 Q. And could you turn to -- well, just</p>	<p style="text-align: right;">331</p> <p>1 prices that are discounted significantly below AWP or</p> <p>2 list price. And then the third paragraph begins, the</p> <p>3 use of AWP in determining Medicaid reimbursement for</p> <p>4 drugs has been a problem that HCFA has recognized for</p> <p>5 some time.</p> <p>6 And then also could you turn to page 22?</p> <p>7 I want to read one more thing and then I have a</p> <p>8 question for you. And you'll see at the bottom, last</p> <p>9 sentence on the second paragraph: AWP represents a</p> <p>10 list price and does not reflect several types of</p> <p>11 discounts such as prompt payment discounts, total</p> <p>12 order discounts, end of year discounts, and any other</p> <p>13 trade discounts, rebates or free goods that do not</p> <p>14 appear on the pharmacist's invoices.</p> <p>15 With respect to those three parts that I</p> <p>16 read to you, did Ven-A-Care provide any information</p> <p>17 to the federal government that, to your knowledge,</p> <p>18 was used in reaching those conclusions?</p> <p>19 MR. BREEN: Objection, form. You mean</p> <p>20 prior to 19 -- prior to September 1984?</p> <p>21 MR. BERLIN: Yes.</p> <p>22 THE WITNESS: No. Prior to September of</p>

24 (Pages 348 to 351)

<p style="text-align: right;">348</p> <p>1 allegations -- are there any allegations in the</p> <p>2 complaint that Ven-A-Care claims were not</p> <p>3 disclosed in this document.</p> <p>4 THE WITNESS: I guess we believe --</p> <p>5 MR. BREEN: Objection to form.</p> <p>6 THE WITNESS: I guess we believe the</p> <p>7 allegations in this complaint are not disclosed</p> <p>8 in this document.</p> <p>9 Q. (By Mr. Berlin) At all?</p> <p>10 A. Well, I -- I mean, they are different.</p> <p>11 They're different things.</p> <p>12 (Exhibit Lockwood Ery 015 was</p> <p>13 marked for identification.)</p> <p>14 Q. (By Mr. Berlin) What we've marked as</p> <p>15 Exhibit 15 is a printout of an article from the</p> <p>16 Lexington Harold Leader dated July 5, 1987, Drug</p> <p>17 Industry Overcharging Medicaid Prescription Drug</p> <p>18 Taxpayers Millions of Extra Dollars. When was the</p> <p>19 first time you've seen this article, anyone at</p> <p>20 Ven-A-Care?</p> <p>21 A. The first time Ven-A-Care saw this article</p> <p>22 was when it was sent to us by Abbott and it was not</p>	<p style="text-align: right;">350</p> <p>1 THE WITNESS: I think we described what we</p> <p>2 believe as marketing the spread in some detail.</p> <p>3 There may be similarities, but this document</p> <p>4 doesn't say anything about Abbott, that I could</p> <p>5 see. And I don't -- I don't think it identifies</p> <p>6 Abbott as a company that's doing that sort of</p> <p>7 thing, and in particular, the pharmacy --</p> <p>8 Pharmaceutical Products Division of Abbott is</p> <p>9 not identified doing this sort of thing in this</p> <p>10 document.</p> <p>11 Q. (By Mr. Berlin) And could you turn to</p> <p>12 page 4?</p> <p>13 A. Yes.</p> <p>14 Q. And do you see the third paragraph there</p> <p>15 says, but then Medicaid officials began getting</p> <p>16 company catalogs either on their own or from</p> <p>17 competitors that laid -- that -- excuse me, that</p> <p>18 listed the real drug prices that pharmacies were</p> <p>19 paying.</p> <p>20 And that's what Ven-A-Care did, right? It</p> <p>21 looked at catalog information that listed the prices</p> <p>22 that pharmacies actually were paying and compared</p>
<p style="text-align: right;">349</p> <p>1 relied on by us.</p> <p>2 Q. And could you go to the third paragraph,</p> <p>3 and it starts, the problem officials say? You see</p> <p>4 where I'm referring to?</p> <p>5 A. Yes, sir.</p> <p>6 Q. It says, pricing data often described in</p> <p>7 the pharmaceutical industry as meaningless or a,</p> <p>8 quote, joke, period, end quote. The system is</p> <p>9 distorted even further by drug companies that publish</p> <p>10 prices that are dramatically higher than the prices</p> <p>11 they actually charge pharmacies. The sales technique</p> <p>12 called playing the spread allows some pharmacies a</p> <p>13 larger profit margin on Medicaid drugs and frequently</p> <p>14 forces companies that play by the rules to lose</p> <p>15 business. Now, did you -- you did have an</p> <p>16 opportunity to read this?</p> <p>17 A. I read this document, yes.</p> <p>18 Q. And there's a further discussion about,</p> <p>19 quote, playing the spread, end quote. And is it your</p> <p>20 understanding of that that that is similar to what</p> <p>21 Ven-A-Care has referred to as marketing the spread?</p> <p>22 MR. BREEN: Objection, form.</p>	<p style="text-align: right;">351</p> <p>1 that with the prices that were listed in Redbook?</p> <p>2 MR. BREEN: Object to the form.</p> <p>3 THE WITNESS: Well, I would say what</p> <p>4 Ven-A-Care did is Ven-A-Care certainly used its</p> <p>5 pricing catalogs and its pricing materials in</p> <p>6 bringing the complaint, but more specifically it</p> <p>7 looked at Abbott and Abbott's behavior in those</p> <p>8 catalogs and -- and price lists and identified</p> <p>9 what we believe is fraud on Abbott's part.</p> <p>10 And I just don't see Abbott identified in</p> <p>11 this document. It doesn't tell us which</p> <p>12 companies they got catalogs for, who they were,</p> <p>13 at least -- well, let -- it doesn't explain that</p> <p>14 in this paragraph at least. And I don't see</p> <p>15 anywhere in here that -- where they got catalogs</p> <p>16 that involved Abbott's drugs necessarily.</p> <p>17 Q. (By Mr. Berlin) When it refers to the</p> <p>18 Medicaid officials getting company catalogs, it</p> <p>19 doesn't refer to any particular pharmaceutical</p> <p>20 company, right?</p> <p>21 MR. BREEN: Objection, form.</p> <p>22 THE WITNESS: Well, in that -- at least in</p>

26 (Pages 356 to 359)

<p style="text-align: right;">356</p> <p>1 A. Ven-A-Care first saw this document when it 2 was produced to us by Abbott is our current 3 understanding, thinking, and we did not rely on this 4 document. 5 Q. When you say produced by Abbott are you -- 6 when did you receive that? 7 A. Well, when you sent it to us. 8 Q. And could you turn -- and I'm going to 9 refer to the page numbers at the top of the page. 10 A. Okay. 11 Q. Could you turn to page 239? 12 MR. BREEN: 239 or 289? 13 Q. (By Mr. Berlin) Let me try again. 293. 14 And you'll see there is a table there preceded by the 15 text, in September 1985, the oversight subcommittee, 16 for example, revealed the following pricing practices 17 as typical of our market. And it lists product, AWP 18 and contract price, right? 19 A. Well, I -- it lists products, AWP and 20 contract. 21 Q. And these -- the difference between AWP 22 and contract show AWP spreads as calculated in</p>	<p style="text-align: right;">358</p> <p>1 Q. Could you turn to page 303 and 304? 2 A. Okay. 3 Q. You see toward the bottom of page 303 it 4 lists -- well, let me just back up a second. This -- 5 this table on these two pages and also on other pages 6 of this document shows AWP price, direct price, 7 contract price, discount off of AWP and discount off 8 of direct, right? 9 A. Those are the columns that are listed as 10 well as a description of the drug on 303 and 304, 11 yes. 12 Q. And one of your comments when I showed you 13 the table on 293 was that that didn't list any of the 14 drugs that are at issue in your complaint, right? 15 A. That's correct, that table did not. 16 Q. And in this table, if you go down, it 17 shows EES 400 tabs, EES 200 liquid, EES 400 liquid, 18 which are all Ery products, right? 19 A. These are Erythromycin products, yes. 20 Q. And then on the next page, 304, it lists 21 several measurements of Ery tab, Eryped. You see 22 that part of the page?</p>
<p style="text-align: right;">357</p> <p>1 Exhibit A to Ven-A-Care's complaint, if you -- in 2 other words, if you calculate the AWP spreads as 3 Ven-A-Care did in that exhibit, this page shows AWP 4 spreads as large or larger than any spread alleged in 5 your complaint, right? 6 MR. BREEN: Objection, form. 7 THE WITNESS: I believe this chart shows 8 some drugs with very large complaints. They're 9 not the same drugs that are in our complaint. 10 Excuse me. I see some drugs in this chart with 11 very large spreads. They're not the same drugs 12 that are in our complaint. 13 Q. (By Mr. Berlin) But this is representing 14 that -- that in September 1985, and then reprinted 15 here again in 1992, there was knowledge that there 16 were spreads as high as 1,600 percent, right? For 17 example, K-tab, that spread is 16.84 percent? 18 A. I would say based on this, there was 19 knowledge in -- certainly at the time this was done, 20 and apparently the oversight committee thought there 21 was a wide range of prices available in the 22 marketplace, yes.</p>	<p style="text-align: right;">359</p> <p>1 A. Ery tab and Eryped, yes. 2 Q. And then going back to EES 400 tabs on 3 page 303 -- 4 A. Yes. 5 Q. -- which shows an AWP price of 104.12 and 6 a contract price of 46.25, and then it shows the 7 discount off of AWP is 55.58 percent. Is that also 8 expressed as AWP minus 55.58 percent would equal the 9 contract price? 10 A. Well, it says what it says. It says 11 discount off of AWP, and the way they calculate it, 12 which I assume is accurate, these purposes, is 55.58 13 percent. Yes. 14 Q. And that -- I did the math and it 15 translates to a AWP spread as calculated in Exhibit A 16 to the complaint of 20 -- of 225 percent. 17 A. Okay. Assuming your math is accurate. 18 Q. You'll accept that? 19 A. I'll accept that, assuming -- 20 Q. And that is -- that's -- that is in the 21 range of AWP spreads that Ven-A-Care alleges in its 22 complaint, right?</p>

<p style="text-align: right;">360</p> <p>1 A. I think it's in the range of AWP spreads,</p> <p>2 yes.</p> <p>3 Q. And the next page, if you look at Ery tab,</p> <p>4 250 milligrams, and Ery tab, 250 milligrams, is one</p> <p>5 of the Abbott NDCs included in your complaint, right?</p> <p>6 MR. BREEN: Objection, form.</p> <p>7 THE WITNESS: Yes. I don't know if</p> <p>8 these -- if these -- if there are other Ery</p> <p>9 tabs, if these represent other manufacturers or</p> <p>10 whether they represent Abbott, it doesn't say</p> <p>11 that.</p> <p>12 Q. (By Mr. Berlin) And --</p> <p>13 A. And that's true for, as far as I can tell,</p> <p>14 all the drugs in this chart. I don't see -- I don't</p> <p>15 see anything from -- that expressly says its Abbott's</p> <p>16 drug, but go ahead.</p> <p>17 Q. And for that drug, the Ery tab, 250</p> <p>18 milligrams, it has an AWP of 23.75, right?</p> <p>19 A. Yes, sir, I see that.</p> <p>20 Q. Contract price of \$3.51?</p> <p>21 A. Yes, sir, I see that.</p> <p>22 Q. And I know you don't have a calculator,</p>	<p style="text-align: right;">362</p> <p>1 A. I think -- well, I don't need to -- I</p> <p>2 think I have to rely on Mr. Jones' representations in</p> <p>3 that time period.</p> <p>4 Q. And I'm going to ask you a more narrow</p> <p>5 question now, which is, based on the fact that you</p> <p>6 didn't disclose your allegations about Erythromycin</p> <p>7 to the government until the year 2000, can I</p> <p>8 correctly assume that Ven-A-Care was in no way a</p> <p>9 source of this pricing information about Erythromycin</p> <p>10 in this document marked as Exhibit 16?</p> <p>11 A. We did not supply the pricing information</p> <p>12 on this -- in this document.</p> <p>13 MR. BERLIN: Okay. I'm going to mark</p> <p>14 another document now. It's actually -- it's an</p> <p>15 excerpt of the OIG working file of the audit</p> <p>16 that led to the OIG's 1997 report, and we'll</p> <p>17 mark it as Exhibit 17.</p> <p>18 (Exhibit Lockwood Ery 017 was</p> <p>19 marked for identification.)</p> <p>20 Q. (By Mr. Berlin) First of all,</p> <p>21 Dr. Lockwood, when did Ven-A-Care become aware that</p> <p>22 OIG was conducting the audit that eventually led to</p>
<p style="text-align: right;">361</p> <p>1 but I did it and it comes out to 677 percent. At</p> <p>2 least looking at those numbers, does that look</p> <p>3 approximately correct?</p> <p>4 A. Assuming your math is correct, I would</p> <p>5 accept that, that that's true.</p> <p>6 Q. And that's actually as large or larger</p> <p>7 than the spreads alleged in your complaint, right?</p> <p>8 A. I would -- I would say that's true,</p> <p>9 although our -- I mean, our complaint is specifically</p> <p>10 for Abbott's drugs.</p> <p>11 Q. And did you provide information to the --</p> <p>12 you being Ven-A-Care provide any information to the</p> <p>13 government that led to the disclosure of this</p> <p>14 information in this document that we've marked as</p> <p>15 Exhibit 16?</p> <p>16 A. Well, I believe we started disclosing</p> <p>17 information to the government in 1990, and I would</p> <p>18 say that that was discussed in Mr. Jones' deposition,</p> <p>19 I assume. And I don't know if the information we</p> <p>20 disclosed to the government in 1990 found its way to</p> <p>21 this report or not.</p> <p>22 Q. Well, let me ask --</p>	<p style="text-align: right;">363</p> <p>1 its reports in 1996 and 1997?</p> <p>2 A. I would expect that kind of information,</p> <p>3 to the extent we have it, would have been discussed</p> <p>4 in Mr. Jones' deposition in that -- that time period.</p> <p>5 He and Mr. Bentley were the people who worked with</p> <p>6 the government from 1990 certainly up until the time</p> <p>7 I became more involved with Ven-A-Care. So I would</p> <p>8 rely on his statements on that.</p> <p>9 MR. BERLIN: Jim -- and I apologize.</p> <p>10 Obviously there are a lot of depositions for me</p> <p>11 to make it through, but I didn't see an answer</p> <p>12 to that precise question. Are you able to --</p> <p>13 I'm not representing to you it's not there. I</p> <p>14 just don't recall seeing it. Are you able to</p> <p>15 refer me to that.</p> <p>16 MR. BREEN: I can't sitting here right</p> <p>17 now. I will do the following, though: I'll</p> <p>18 look into it, talk to Mr. Jones about it. I do</p> <p>19 not think that we're going to have Ven-A-Care</p> <p>20 giving the OIG information on the oral</p> <p>21 Erythromycins prior to this report. Okay. I</p> <p>22 think that's what you're trying to --</p>

36 (Pages 396 to 399)

<p style="text-align: right;">396</p> <p>1 of tape number five. The time is 2:26 p.m. and</p> <p>2 we're back on the record.</p> <p>3 MR. BREEN: I'd ask that the question</p> <p>4 pending be read back so it's very clear what</p> <p>5 question the witness is answering.</p> <p>6 MR. BERLIN: Actually I withdraw the</p> <p>7 question.</p> <p>8 MR. BREEN: After you had him read the</p> <p>9 report?</p> <p>10 MR. BERLIN: I'm going to ask him in a</p> <p>11 minute. I'm withdrawing that particular --</p> <p>12 Q. (By Mr. Berlin) Have you had a chance to</p> <p>13 read the report?</p> <p>14 A. I've read the report, yes, sir.</p> <p>15 Q. And when did Ven-A-Care become aware of</p> <p>16 this report?</p> <p>17 A. Well, we certainly focused on this report</p> <p>18 when you sent it to us. We did not rely on this</p> <p>19 report -- report in filing our lawsuit. We don't</p> <p>20 have a direct recollection of specifically reading</p> <p>21 this report -- although someone may have -- and we're</p> <p>22 ready to answer questions.</p>	<p style="text-align: right;">398</p> <p>1 question?</p> <p>2 MR. BREEN: As a 30(b)(1) witness?</p> <p>3 MR. BERLIN: He can answer it and you can</p> <p>4 object as to how you see it whenever you want.</p> <p>5 Q. (By Mr. Berlin) Please answer the</p> <p>6 question.</p> <p>7 A. Well, I would say that in the time period</p> <p>8 you're discussing that Mr. Jones is much more</p> <p>9 familiar with Ven-A-Care's activities because I</p> <p>10 really had just begun working at Ven-A-Care in the</p> <p>11 '95 to '96 time frame and I had limited</p> <p>12 responsibilities and part-time responsibilities</p> <p>13 whereas Mr. Jones was full-time and had been involved</p> <p>14 from the beginning.</p> <p>15 So his knowledge, much like probably all</p> <p>16 of these older documents, is better than mine in that</p> <p>17 area. I -- I know that we discussed some oral</p> <p>18 medications in -- on a personal level in -- oh, I</p> <p>19 think by 1997 we had for sure. But I think Mr. Jones</p> <p>20 is the guy who can give you the answer to this</p> <p>21 question far better than I can.</p> <p>22 Q. I'll be very clear that I'm now asking you</p>
<p style="text-align: right;">397</p> <p>1 Q. As of 1996 was Ven-A-Care's investigation</p> <p>2 into the -- into these AWP and pricing issues limited</p> <p>3 to injectables and IV drugs?</p> <p>4 MR. BREEN: Objection to form.</p> <p>5 THE WITNESS: I would say that we were</p> <p>6 focused on mainly injectables and IV drugs at</p> <p>7 that point in time. I wouldn't say that it was</p> <p>8 entirely limited to that, no.</p> <p>9 Q. (By Mr. Berlin) As of that time, had</p> <p>10 Ven-A-Care brought to the government's attention any</p> <p>11 specific allegation as to any pharmaceutical other</p> <p>12 than injectables or IV drugs?</p> <p>13 MR. BREEN: I'm going to again object,</p> <p>14 outside the designations for this 30(b)(6)</p> <p>15 deposition. Mr. Jones covered that in detail.</p> <p>16 If you want to ask him as a 30(b)(1) based upon</p> <p>17 his recollection, that's fine, but he's covered</p> <p>18 this in detail. I don't want to go over the</p> <p>19 topics because that will be coaching the</p> <p>20 witness, but your question is covered by the</p> <p>21 other depositions.</p> <p>22 Q. (By Mr. Berlin) Can you answer that</p>	<p style="text-align: right;">399</p> <p>1 as an individual, do you personally have any</p> <p>2 knowledge of Ven-A-Care bringing to any government</p> <p>3 entity's attention any allegation with respect to a</p> <p>4 pharmaceutical other than injectables or IVs at any</p> <p>5 time prior to the end of 1996?</p> <p>6 MR. BREEN: Objection, form. And Eric,</p> <p>7 there's one thing about the question if you</p> <p>8 would modify it, I think we could get a very --</p> <p>9 much clearer answer.</p> <p>10 THE WITNESS: We had discussed some oral</p> <p>11 medications with the government, had discussed</p> <p>12 some issues about them, and I recall doing that</p> <p>13 in -- I think I personally recall doing it in</p> <p>14 '97. Whether we had done it earlier than that,</p> <p>15 I don't -- I think that's Mr. Jones' deal. I --</p> <p>16 and I think we felt that had been covered in his</p> <p>17 deposition. I certainly didn't prepare myself</p> <p>18 to work on that in particular, at least --</p> <p>19 Q. (By Mr. Berlin) Did you attend the --</p> <p>20 I've referred earlier to the presentation to Texas in</p> <p>21 1997?</p> <p>22 A. Yes, sir, I did.</p>

<p style="text-align: right;">408</p> <p>1 conversations are far better known to Mr. Jones than</p> <p>2 they are to me and it was our intent to stimulate the</p> <p>3 government in the pharmaceutical pricing area.</p> <p>4 Q. And --</p> <p>5 A. I mean, I think that's been</p> <p>6 well-documented by letters from Ven-A-Care over</p> <p>7 the -- I mean, it's been talked about a lot.</p> <p>8 Q. And then Ven-A-Care -- I mean, what you're</p> <p>9 saying is this was a big issue to Ven-A-Care, right?</p> <p>10 MR. BREEN: Objection to form.</p> <p>11 Q. (By Mr. Berlin) I mean pursuing -- let me</p> <p>12 withdraw the question pursuant to counsel's</p> <p>13 objection. Ven-A-Care stopped seeing patients in</p> <p>14 1998, right?</p> <p>15 MR. BREEN: Objection to form.</p> <p>16 THE WITNESS: That's the last patient that</p> <p>17 I think we recall seeing, yes.</p> <p>18 Q. (By Mr. Berlin) And between that time now</p> <p>19 11 years later, pursuing AWP and pricing alleged</p> <p>20 fraud has been Ven-A-Care's main business, right?</p> <p>21 A. It's certainly been our major activity,</p> <p>22 and I don't know if it's proper to call it a</p>	<p style="text-align: right;">410</p> <p>1 issued after your conversations with Mr. Vito in</p> <p>2 providing pricing information to the government?</p> <p>3 A. I'm not aware of that specifically. Our</p> <p>4 conversations with Mr. Vito were usually him calling</p> <p>5 and wanting information or us calling him and giving</p> <p>6 him information as opposed to discussing the latest</p> <p>7 OIG report.</p> <p>8 Q. And your purpose of providing that was to</p> <p>9 stimulate government activity and hopefully even a</p> <p>10 report like this, right?</p> <p>11 A. It was fine with us if they did that, yes.</p> <p>12 Yes. As I said, I don't -- we -- we may have read</p> <p>13 this report. Someone at Ven-A-Care may have read</p> <p>14 this report. We don't have a -- we don't believe we</p> <p>15 have a copy of this report in our file that we can</p> <p>16 say that we -- oh, yeah, we all read this; we can't</p> <p>17 say that, or that we relied on it in some way or that</p> <p>18 it changed or affected our complaint in some way.</p> <p>19 We knew the government was generating</p> <p>20 reports and seeing some increased interest, but we</p> <p>21 were also busy working on other things all the time,</p> <p>22 so --</p>
<p style="text-align: right;">409</p> <p>1 business, but it's certainly our major activity.</p> <p>2 Q. It's something that you work, would you</p> <p>3 say, full-time on, almost full-time?</p> <p>4 A. I worked full-time on it, I would say. I</p> <p>5 spend a lot of time working on it, yes, sir.</p> <p>6 Q. And at any point prior to 2000 -- use that</p> <p>7 date -- did Ven-A-Care know that the OIG had issued a</p> <p>8 report that found that for generic drugs, that</p> <p>9 pharmacies pay an average of 42.5 percent less than</p> <p>10 AWP for drugs sold to Medicaid beneficiaries?</p> <p>11 MR. BREEN: Objection to form.</p> <p>12 Q. (By Mr. Berlin) I'm not asking whether</p> <p>13 you read it but whether Ven-A-Care knew that this</p> <p>14 report had been issued?</p> <p>15 A. We don't have a specific recollection of</p> <p>16 that at this time. We don't have a specific</p> <p>17 recollection of this exact report or the details of</p> <p>18 it at this time. We didn't rely on the report in</p> <p>19 filing our lawsuit. That's, I think, what I can say</p> <p>20 about it.</p> <p>21 Q. And prior to 2000, did anyone from the</p> <p>22 government alert you that an OIG report had been</p>	<p style="text-align: right;">411</p> <p>1 Q. What other things are you referring to?</p> <p>2 A. Well, pursuing the litigation that we were</p> <p>3 involved in at that time.</p> <p>4 Q. And Dr. Lockwood, you understand that one</p> <p>5 of the topics that you're here to testify about was</p> <p>6 when and how Ven-A-Care became aware of each of the</p> <p>7 documents that we provided to you, right?</p> <p>8 A. I think that's what I'm -- I'm trying to</p> <p>9 tell you.</p> <p>10 Q. I understand. I just want to make sure</p> <p>11 that we're on the same page.</p> <p>12 A. I don't have a specific recollection.</p> <p>13 That doesn't mean that someone at some point didn't</p> <p>14 see this document perhaps listed on an OIG website.</p> <p>15 I don't -- I don't know. We don't -- the question is</p> <p>16 did someone have a specific recollection of this or</p> <p>17 does Ven-A-Care have a specific recollection of this</p> <p>18 specific document and whole host of circumstances</p> <p>19 around it that would give us some special knowledge</p> <p>20 for this document. I don't think we have that.</p> <p>21 Q. And let me --</p> <p>22 A. I'm sorry. Some of the Albuterol reports</p>